

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2008-319-S**

**IN RE:**

Anthony Moore,

Complainant/Petitioner,

v.

Palmetto Utilities, Inc.,

Defendant/Respondent.

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**MOTION TO DISMISS OF  
PALMETTO UTILITIES, INC.**

Pursuant to 26 S.C. Code Ann. Regs. 103-829 and applicable South Carolina law, Palmetto Utilities, Inc. ("Palmetto Utilities" or the "Company") hereby moves the Public Service Commission of South Carolina ("Commission") to dismiss the above-captioned matter on the grounds that (1) the complainant has failed to follow the Commission rules and regulations and failed to file prefiled testimony in accordance with the Commission's directive and (2) the complaint fails to assert any claim within the jurisdiction of the Commission or any facts sufficient to state a claim upon which relief can be granted. See Answer ¶¶ 39-42, filed October 2, 2008. In support of this motion, Palmetto Utilities would respectfully show as follows.

**BACKGROUND**

This matter arises from a complaint filed with the Commission on or about August 12, 2008 ("Complaint"), concerning the residence located at 607 North Crossing Drive in Columbia, South Carolina ("Residence"). Palmetto Utilities currently provides sewerage service

to the current owner of the Residence, Mr. Anthony Moore (“Complainant”), and similarly provided service to the prior owner of the property (“Prior Owner”). Upon information and belief, the Prior Owner transferred the Residence to Complainant in July 2007. On or about October 11, 2007, the Prior Owner contacted Palmetto Utilities and informed it of the transfer of the Residence to a “Mr. Moore.”<sup>1</sup> That same day, Palmetto Utilities sent a new customer form to the Residence. This form did not have Complainant’s name on it; however, four days later, on October 15, Palmetto Utilities sent another new customer form to 607 North Crossing Drive to the attention of “Anthony Moore.”<sup>2</sup> Thereafter until July 2008, Palmetto Utilities made several attempts to contact Complainant regarding the establishment of service and, each month Palmetto Utilities sent a bill for sewerage service to the Residence. Despite these repeated attempts to contact Complainant, no response was ever received and the monthly bills were never returned to Palmetto Utilities.

On or about July 23, 2008, a service technician of Palmetto Utilities spoke with Complainant and left a “door hanger” on the Residence’s front door which informed Complainant that, in order to avoid disconnection, he should contact Palmetto Utilities for the purpose of establishing service. Thereafter, Complainant contacted the Company and informed Palmetto Utilities that he would visit the Company’s office on July 25, 2008. Upon information and belief, Complainant did not come into the Company’s office that day.

On or about July 28, 2008, Complainant contacted Palmetto Utilities concerning the establishment of sewer service. At that time, Palmetto Utilities informed Complainant that he owed the Company \$387.50 for approximately one (1) year of sewer service. Palmetto Utilities

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<sup>1</sup> The Prior Owner informed Palmetto Utilities that he was unsure of Mr. Moore’s first name.

<sup>2</sup> On or about July 14, 2008, Palmetto Utilities sent a third new customer form to Complainant to which no response was received.

based its calculations of the past due amount upon the date Complainant purchased the Residence as indicated in the closing information provided by the Prior Owner. Complainant assured Palmetto Utilities that he would resolve the account on the following day.

On or about July 29, 2008, Complainant visited the Palmetto Utilities office. Based on the closing date given by Complainant, Palmetto Utilities recalculated the total amount due to be \$319.75.<sup>3</sup> At that time, Complainant protested the balance stating that he could not pay the amount due, and that he should not be obligated to pay for the charges. Complainant expressed his displeasure with the bill in a loud and agitated manner. A Palmetto Utilities employee became concerned with Complainant's aggressive behavior and asked Complainant to leave.

Complainant then spoke with Chad Campbell, an Investigator with the South Carolina Office of Regulatory Staff ("ORS") Consumer Services Department. Mr. Campbell contacted a Palmetto Utilities employee on behalf of Mr. Moore and a deferred payment plan went into effect with the consent of all parties, including Mr. Moore. Pursuant to the terms of this plan, Complainant would pay \$85.00 per month – \$29.50 of which would constitute payment for the continuing monthly service fee and \$55.50 of which would be applied against the outstanding balance – until such time as Complainant had paid the total amount due and owing on the account. However, that same day, Complainant informed Mr. Campbell that he was unable to make the monthly payment in that amount. Thereafter, Palmetto Utilities agreed to reduce the monthly payment to \$65.00 a month – \$29.50 of which would constitute payment for the continuing monthly service fee and \$35.50 of which would be applied against the outstanding balance – until the balance on the account had been paid. Complainant again agreed to this arrangement. On or about July 30, 2008, Complainant contacted Palmetto Utilities to inform

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<sup>3</sup> This was based on five days service in July 2007, monthly service from August 2007 through May 2008, and a \$20.00 new customer fee.

them that he was unable to make this payment either. Mr. Campbell again contacted Palmetto Utilities and it agreed to accept payment of \$35.00 on August 1 and \$30.03 on August 9, 2008. Following this initial payment, Complainant would submit payment of \$65.00 a month as previously agreed until the balance on the account had been paid, with the understanding that a missed payment by Complainant would result in a 15-day certified notice to disconnect. Complainant agreed to this arrangement.

On August 16, 2008, Complainant came into the Palmetto Utilities office and placed a letter complaint on the counter while the employee was helping another customer. On or about August 19, 2008 a second letter complaint from Complainant was found in Palmetto Utilities' night drop box.

Notably, **Complainant has failed to make any payment on his account since the Complaint was filed.** Hence the other customers of Palmetto Utilities are currently bearing the cost of his service. As noted, the Complainant failed to contact Palmetto Utilities and establish an account and simply does not want to pay for the service he utilized in the past. Having filed the Complaint, Complainant has taken it upon himself to stop paying the current bill even though there is no dispute about the service being currently provided. In fact, Complainant has acknowledged the past due amount by entering the deferred payment plan. He subsequently broke that agreement and now is paying nothing. As a result the outstanding balance owed to Palmetto Utilities exceeds \$400 and grows daily. This has led to a subsequent disconnection notice for nonpayment for service over the last several months which was sent to Mr. Moore on or about November 15. This will be followed by the second disconnection and termination notice, pursuant to the Regulation 103-535.1, after which time Mr. Moore's service will be disconnected for nonpayment.

## **ARGUMENT**

### **I. Complainant has failed to file prefiled testimony and this matter should be dismissed.**

By letter dated October 14, 2008, Commission Staff established deadlines for the parties to this proceeding to file prefiled testimony and served this document on all parties of record, including Complainant. Complainant's prefiled direct testimony was due on December 11, 2008; however, Complainant failed to file the required testimony.<sup>4</sup> See also 26 S.C. Code Ann. Regs. 103-845 (prefiled testimony requirement). As Complainant has failed to comply with the Commission's rules and procedures, this case should be dismissed with prejudice. See Jackson v. S.C. Electric & Gas Co., Order Granting Motion to Dismiss, Order No. 2007-670, Docket No. 2007-262-EG (S.C. Pub. Serv. Comm'n Sept. 27, 2007) (dismissing case when complainant failed to prefile testimony).

### **II. The Complaint fails to state a claim upon which relief can be granted.**

Commission Regulation 103-819 requires that pleadings include "[a] statement identifying the specific relief sought" by a complainant. Similarly, Commission Regulation 103-824 requires that a complaint contain "a concise statement of the nature of the relief sought." The Complaint filed in this proceeding fails to identify the specific relief sought. In the absence of a request for specific relief, the Commission cannot determine whether the complaint seeks relief within the authority of the Commission to grant. The Complaint/Petition does not comply with the requirements of the Commission's regulations pertaining to pleadings and complaints and should therefore be dismissed without more. While it is not precisely clear what Complainant complains of, in essence it appears that he is attempting to escape payment

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<sup>4</sup> As Complainant failed to comply with the Commission's rules and regulations and the prefiled testimony requirements, Palmetto Utilities is not required to file testimony in this docket.

obligations for sewerage services. The Commission's jurisdiction is limited to the adjudication of any claimed act or omission for a sewerage utility "under the provisions of Articles 1, 3, and 5 of this chapter," S.C. Code Ann. § 58-5-270. Because the Complaint fails to identify, allege, or complain of any act or omission under Articles 1, 3, or 5 of Chapter 5 of the South Carolina Code, the Commission has no jurisdiction over the Complaint.

Palmetto Utilities has provided sewerage services since the Complainant purchased the Residence, from late July 2007 to the present. Like all other Palmetto Utilities' residential customers, Complainant is charged a rate of \$29.50 for the service, a rate that has been filed and approved by the Commission. Because it alleges no overcharge or other irregularity in the sewerage service, the Complaint fails to allege any violation for this Commission to consider.

Having complained about having to pay for roughly a year of service all at once, Palmetto Utilities, along with ORS, worked out deferred payment plans for Complainant. Complainant agreed to, then backed out of, the payment plans. When a customer has financial hardships in paying his or her bill, Palmetto Utilities always is willing to work with them and resolve any issues and disputes.<sup>5</sup> However, such efforts relating to charges for services rendered does not include waiving or foregoing the balance owed. It would be wrong to give the Complainant a windfall for his refusal to pay properly due and owing bills for services received at the expense of Palmetto Utilities' other customers.

There is no dispute that sewerage services were provided the entire time Complainant lived at the Residence, no dispute over whether the bill was calculated correctly, and no allegation has been made nor any claim asserted that Palmetto Utilities has acted inappropriately or violated any applicable statute or regulation. Quite simply, no claim of wrongdoing has been

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<sup>5</sup> Attempts to reach Complainant to discuss these matters have been unsuccessful, as the telephone number Complainant provided Palmetto Utilities does not accept incoming calls.

plead. Because no facts or allegations have been asserted that could form the basis for any claim of relief, there is nothing for the Commission to adjudicate. Therefore, this matter should be dismissed with prejudice.

### **CONCLUSION**

Complainant has failed to file prefiled testimony in accordance with the Commission direction. The Complaint also fails to state a claim for which the Commission has jurisdiction and authority. For these reasons, this motion to dismiss should be granted and this matter dismissed with prejudice.

Respectfully submitted,

s/Randolph Lowell

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December 18, 2008